

PROFESSIONAL SERVICES AGREEMENT

THIS IS AN AGREEMENT made as of July 27, 2009, between **THE CITY OF BOZEMAN, a Municipal Corporation, Bozeman, Montana**, PO Box 1230, Bozeman, MT 59771-1230, **through its duly elected Commission, (OWNER)** and Michele Puiggari, whose principle offices are located at 3801 Milwaukee Ct. Missoula MT 59808 (CONTRACTOR).

WHEREAS, the accomplishment of the work and services described in this Agreement is essential to the OWNER'S understanding of various issues related to the City of Bozeman's employment practices; and

WHEREAS, the OWNER intends to and has selected the CONTRACTOR to provide necessary and professional services for conducting a confidential investigation into certain allegations related to an email sent to the Bozeman City Commission on June 25, 2009; and

WHEREAS, CONTRACTOR represents it is willing and qualified to perform the professional services for this investigation as described in this Agreement.

NOW THEREFORE, in consideration of the foregoing recitals and the mutual covenants and conditions contained herein, the parties agree as follows:

1. Professional Services to be Performed:

- a. Scope of Work: The CONTRACTOR shall be responsible for conducting interviews with all applicable City of Bozeman employees and any other person the CONTRACTOR deems necessary to determine whether statements made by employees before the City Commission on June 22, 2009 contained any false or misleading statements, as alleged in an email dated June 25, 2009, and, if so, whether those statements were made with knowledge of their falsity or misleading nature. In fulfilling the above, the Contractor shall inquire as to:

- i. The voluntariness of background checks conducted on those being interviewed as it relates to final hiring decision;
 - ii. The initiation of and reason behind the use of waivers and consent forms for those being interviewed;
 - iii. the specifics regarding the practice of reviewing the social networking sites of those being interviewed;
 - iv. the specific details of the various log-in information that was acquired; and
 - v. a review of whether those being interviewed had any reservations of signing the required waiver and consent forms. This can be performed using a sample of applicants.
- b. Final Work Product/Release to Public: The CONTRACTOR shall prepare specific written findings of fact regarding the above Scope of Work and make the findings available in written format directly and only to the Bozeman City Commission. The CONTRACTOR's inquiry shall be limited to the gathering of facts and shall not issue conclusions, recommendations, or opinions. In addition, no other entity or individual shall, without the approval of the City Commission, have access to any information obtained by the CONTRACTOR. CONTRACTOR acknowledges the final written work product may be released to the public after portions thereof are redacted, if required, and pursuant to subsection c, below, to protect the privacy interests of any individual giving information or about whom information is given.
- c. Confidentiality: CONTRACTOR agrees to protect the confidentiality of all participants and shall not disclose information related to this investigation to any entity other than the Bozeman City Commission unless required to do so by a court of law or authorized to do so by the Bozeman City Commission. CONTRACTOR shall hold any subcontractor to the same requirements. CONTRACTOR recognizes the Bozeman City Commission may release information related to this investigation and hereby authorizes the Commission to make public any information obtained by the CONTRACTOR that the Commission, in its sole discretion, deems necessary. Both parties recognize the Commission may release information if an individual for whom the Commission is asserting a privacy interests voluntarily authorizes the release of information directly related to their statements or other privacy interests.
- d. Presentation before the City Commission/Open Meeting: Upon submittal of a written report to the Bozeman City Commission the Commission may schedule a

public meeting to discuss the findings contained within the report. The CONTRACTOR specifically agrees to attend this meeting if requested by the Commission. CONTRACTOR understands that any portion of this meeting may be closed to the public if, pursuant to Sect. 2-3-203(3), MCA, the presiding officer of the Commission determines the privacy interests of any person giving information to the Commission or about whom information is being discussed clearly outweighs the merits of public disclosure.

- e. Prospective Interviewees/Phone and Email Access: In its sole discretion, to fulfill the above requirements, CONTRACTOR shall select which employees or other parties will be requested to conduct interviews. No employee shall be mandated to participate in an interview. In addition to selecting specific employees to participate in an interview, the CONTRACTOR shall be available to any employee wishing to discuss any of the above items through an email account hosted by the City of Bozeman and through a City of Bozeman telephone number. CONTRACTOR shall work with the City of Bozeman Information Technology Director to establish email and phone accounts for such interviews.
 - f. Public Records/ Results Property of City of Bozeman: The CONTRACTOR may, at the CONTRACTOR's discretion and upon approval of the interviewee, tape record or use any other audio capturing media. All data collected, including notes, audio recordings, and any other written or audible information, shall become the property of the City of Bozeman and maintained by the City Clerk in a secure location pursuant to the City of Bozeman's record retention policies and Montana and federal law.
2. Nature of Work: CONTRACTOR is providing professional services and is expressly not providing legal services to the City of Bozeman.
 3. Compensation: CONTRACTOR shall be paid \$80.00 per hour for time spent fulfilling the Scope of Work as described above except the CONTRACTOR shall be paid \$30.00 per hour for travel. Approved expenses including travel expenses such as overnight accommodations and meals, if necessary, costs related to media transcription services, and costs related to the production of a final report shall be reimbursable. Total compensation under this Agreement, including expenses, is not to exceed \$10,000.00. CONTRACTOR shall submit invoices to the Bozeman City Attorney for processing on a monthly basis. The invoices shall be approved by the Bozeman City Commission.

4. Time of Completion: CONTRACTOR recognizes time is of the essence and will complete the above described duties in as expeditious a manner as possible but under no circumstances shall the CONTRACTOR complete the services described in Sect. 1, above, any later than October 1, 2009.

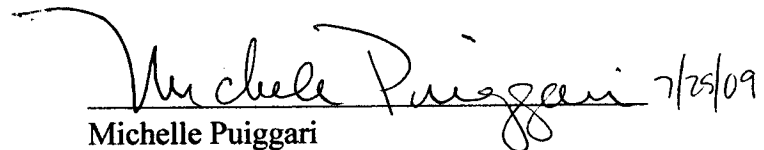
5. Miscellaneous:

- a. Independent Contractor: It is understood and agreed that the CONTRACTOR is a professional person and that the relationship created by this agreement is that of an independent contractor. CONTRACTOR is not an employee of City, and is not entitled to the benefits provided by City to its employees, including but not limited to, group insurance and pension plan. As an independent contractor, CONTRACTOR is required to provide the necessary equipment to perform the services required herein. CONTRACTOR is exempted under §39-71-401, MCA, under subsection (d) from the requirement for Workers Compensation Insurance as CONTRACTOR is a sole proprietor that works from a separate fixed business location at 3801 Milwaukee Ct., Missoula, MT 59808.
- a. Assignment/Substitute: Neither this Agreement nor any interest herein, or claim hereunder, shall be assigned or transferred by CONTRACTOR to any party or parties without the prior written approval of the OWNER.
- b. Notice of Claim(s): The CONTRACTOR shall immediately notify the City of any claim, demand, complaint, or cause of action filed, delivered, or served on the CONTRACTOR during the term of this Agreement or after if related in any way to the provision of services under this Agreement.
- c. Indemnification: CONTRACTOR shall hold harmless, and indemnify City, its officers and employees against all liability or loss, and against all claims or actions based on or arising out of damage or injury (including death) to persons or property caused by CONTRACTOR in the performance of this agreement, or based on any violation of any statute, ordinance, or regulation by CONTRACTOR. CONTRACTOR shall also indemnify City against all liability and loss in connection with, and shall assume full responsibility for, payment of all federal, state, and local taxes on contributions imposed or required under unemployment insurance, social security and income tax laws, with respect to CONTRACTOR's employees engaged in performance of the agreement. The City shall indemnify CONTRACTOR for the same caused by the City.

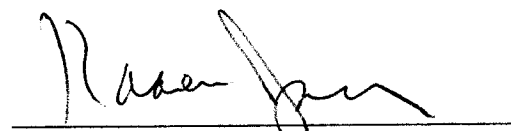
- d. Modification and Amendments: The parties agree that any amendment or modification of this Agreement or any provisions herein shall be made in writing and executed in the same manner as this original document and shall after execution become a part of this Agreement.
- e. Termination: Either party may terminate this Agreement by submitting written notice to the other party. Because of the time sensitive nature of the performance of the obligations under this Agreement, termination by either party will commence immediately upon delivery of said notice. Any work product created by CONTRACTOR up to the point of termination shall be the property of the OWNER and must be delivered to the OWNER within five (5) business days of termination. In the event of termination by either party, CONTRACTOR shall provide a final invoice for work completed to OWNER within ten (10) business days of notice of termination.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement the day and year first above written.


CONTRACTOR:


Michelle Puiggari

CITY OF BOZEMAN


KAAREN JACOBSON
Mayor

Attest:


STACY ULMEN, CMC
City Clerk